

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

In the Matter of)

NOV - 7 2002

Application of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EchoStar Communications Corporation,
(a Nevada Corporation), General Motors
Corporation, and Hughes Electronics
Corporation (Delaware Corporations)

(Transferors)

CS Docket No. 01-348

and

EchoStar Communications Corporation
(a Delaware Corporation)

(Transferee)

To: The Secretary

**REQUEST FOR DEFERRAL AND
DETERMINATION OF HEARING FEE**

Johnson Broadcasting, Inc. ("Johnson"), by its attorney, hereby files its request for deferral and determination that a hearing fee is not required. In support hereof, Johnson states as follows:

Paragraph 297 of the *Hearing Designation Order* ("HDO") in the above-captioned docket, CS Docker No. 01-348, released October 18, 2002 requires applicants as well as parties that filed peitions to deny to submit a hearing fee. However, a hearing fee should not apply to Johnson because Johnson is not an applicant, but rather acquired party status as a result of its filing a petition to deny the above-referenced

No. of Copies rec'd 014
List ABCDE

EchoStar/DirectTV application for transfer of control. Hearing fees generally apply to applicants rather than to parties filing petitions.’

Section 1.1107 requires direct broadcast satellite applicants to pay a hearing fees for “New and Major/Minor change, comparative hearing; comparative license renewal hearing.” Johnson has not filed an amendment nor is it an applicant in a comparative hearing or a comparative license renewal. Section 1.1107 makes no reference to the payment of a hearing fee from a non-applicant party.

To require Johnson to pay a hearing fee would be fundamentally unfair. Any interpretation of Section 1.1107 of the Commission’s rules that requires the payment of a hearing fee would conflict with Johnson’s unequivocal right, as a party in interest, to file a petition to deny pursuant to Section 309 of the Communications Act.

Further, any interpretation of Section 1.1107 of the Commission’s Rules requiring Johnson to submit a hearing fee would discourage parties from filing Petitions to Deny. This would have the undesired effect of discouraging parties from submitting information and data, which the Commission needs to perform its regulatory duties.

Finally, paragraph 295 of the *HDO* gives the applicants 30 days from the mailing of the *NDO* to file an amended application and also to file a petition to suspend the hearing pending review of the application. Notices of Appearance and hearing fees are due no later than 20 days after the *HDO* is mailed. Thus, Johnson could pay the hearing fee only to have the hearing suspended indefinitely. This again would be fundamentally

¹ See. *Establishment of a Fee Collection Program*, 2 FCC Rcd 947 at n. 134 (1988). The FCC will **not** assess a fee in the following situations: **Individuals** or organizations named parties (47 CFR § 1.221); those who file **Petitions to Deny**.

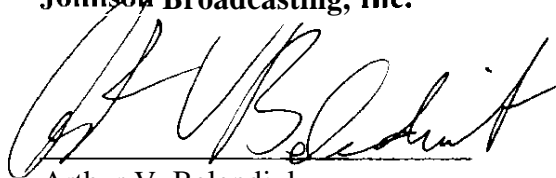
unfair. Any hearing fee that may be due should be paid only after the Commission has had an opportunity to review any filed amendment

Accordingly, Johnson requests that the Commission determine that a non-applicant party is not required to pay a hearing fee. Alternatively, if a hearing fee is required it should not be due until after the Commission has had an opportunity to review any amendment to the application the transferors or transferee may choose to file.

Respectfully submitted,

Johnson Broadcasting, Inc.

By:

A handwritten signature in black ink, appearing to read 'A. V. Belendiuk', is written over a horizontal line.

Arthur V. Belendiuk
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016
(202) 363-4050

November 7, 2002

CERTIFICATE OF SERVICE

I, Sherry Schunemann, in the law offices of Smithwick & Belendiuk, P.C., hereby certify that a copy of the foregoing "Request For Deferral and Determination of Hearing Fee" was mailed by First Class U.S. Mail, postage prepaid (or hand delivered as denoted by an asterisk), this 7th day of November, 2002, to the following:

*Honorable Richard Sippel
Chief, Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

*Charles W. Kelley, Esquire
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
Washington, D.C. 20554

Jack Richards, Esquire
Keller and Heckman, LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Counsel for National Rural Telecommunications Corp.

Christopher C. Cinnamon
Cinnamon Mueller
307 North Michigan Avenue, Suite 1020
Chicago, Illinois 60601
Counsel for American Cable Association

Kemal Kawa, Esquire
O'Melveny & Myers LLP
1650 Tysons Boulevard
McLean, Virginia 22102
Counsel for Northpoint Technology, Ltd.

James W. Olson, Esquire
Howrey, Simon, Arnold & White, LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402
Counsel for National Association of Broadcasters

Patrick J. Grant, Esquire
Arnold & Potter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
Counsel for Pegasus Communications Corporation

William D. Silva, Esquire
Law Offices of William D. Silva
5335 Wisconsin Avenue, N.W., #400
Washington, D.C. 20015-20003
Counsel for Word Network

Peter Tannenwald, Esquire
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., #200
Washington, D.C. 20036-3101
**Counsel for Family Stations, Inc. and North
Pacific International Television, Inc.**

Debbie Goldman, Esquire
Communications Workers of America
501 Third Street, N.W.
Washington, D.C. 20001
Counsel for Communications Workers of America

John R. Feore, Jr., Esquire
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W., #800
Washington, D.C. 20036
Counsel for Paxson Communications Corporation

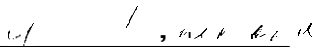
Mark A. Balkin, Esquire
Hardy, Carey & Chautin
110 Veterans Boulevard, #300
Metairie, LA 70005
Counsel for Carolina Christian Television, Inc.

Scott R. Flick, Esquire
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for Univision Communications, Inc.

Barry D. Wood, Esquire
Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, D.C. 20036
**Counsel for Eagle III Broadcasting, LLC and
Brunson Communications, Inc.**

Pantelis Michalopoulos, Esquire
Philip L. Malet, Esquire
Rhonda M. Bolton, Esquire
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
Counsel for EchoStar Communications Corporation

Gary M. Epstein, Esquire
James H. Barker, Esquire
Arthur S. Landerholm
Latham & Watkins
555 11th Street, N.W., #1000
Washington, D.C. 20004
**Counsel for General Motors Corporation,
Hughes Electronic Corporation**



Sherry Schunemann